IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 2777 OF 2003

IN

SUIT NO. 3179 OF 20005

Scarlet Palan .....**Plffs.**
vs.
Myrtle D'souza and Ors. .....**Defnds.**

Clive D'souza for the plaintiffs.
Holland D'souza defendant no.4 and
Hadrain D'souza defendant no.7 present in person.

CORAM: S.U. KAMDAR, J.

DATE : 31st January,2006.

P.C. :.

1. Learned counsel for the plaintiff has taken out the present notice of motion for passing a a preliminary decree in a suit for partition.

2. Inso far as the said suit is concerned originally the property was held by the deceased Morris D’souza who has left behind as his legal heirs the defendants nos. 4 to 7 as well the one Albert D’souza being the son who has since expired and the defendant nos. 1, 2 and 3 are the legal heirs and representatives of the said deceased son Albert D’souza. The defendant no. 4 and 7 are present in court. In so far as the other defendants are concerned they have filed a written statement in the present suit. All the parties have admitted that the plaintiff and defendant nos. 4, 5, 6 and 7 and the defendant nos.1, 2 and 3 as one branch of the deceased Albert D’souza has one-sixth share each.

3. In view of the fact that the share of each of branch has been admitted there is no constrains in making the present motion absolute. Accordingly motion is made absolute and a preliminary decree is passed inrespect of property described therein and declaration is granted that each of them has one-sixth share in the said property. The

Commissioner for taking Accounts is appointed to ascertain the position of the property and file a report for the distribution of the property by meets and bounds and if the same is not possible then to report steps to be taken for sale of the property and distribution of the sale proceeds in accordance with the share declared herein.

4. Motion disposed off with the aforesaid directions. Commissioner for taking Accounts is directed to file a report on or before 31.3.2006 in the pending suit.

sd/-

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